STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **File No. 88520-001**

v

Blue Cross and Blue Shield of Michigan
Respondent
_____/

Issued and entered
this 30th day of April 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On March 14, 2008, XXXXX, on behalf of his minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the request and accepted it on March 21, 2008.

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on April 1, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM Community Blue Group Benefits Certificate (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II
FACTUAL BACKGROUND

From September 4 through September 27, 2007, the Petitioner received occupational and speech therapy services at the XXXXX. The amount charged for these services was $910.00. BCBSM denied coverage for this care.

The Petitioner appealed BCBSM's decision. BCBSM held a managerial-level conference on January 9, 2008, and issued a final adverse determination dated February 11, 2008.

III
ISSUE

Did BCBSM correctly deny the Petitioner's claims for occupational and speech therapy at Kaufman?

IV
ANALYSIS

Petitioner's Argument

The Petitioner has expressive and receptive language disorder that severely affects his language and daily living skills. He has been receiving speech therapy (ST) and occupational therapy (OT) services from XXXXX for the past two years, and according to his father, has achieved excellent results. He believes these services are necessary for him to develop his communication and social skills to a level that will allow him to eventually become a self-supportive adult.

BCBSM has denied coverage for the Petitioner's care at XXXXX because the facility does not participate with BCBSM. The Petitioner points out that the certificate is divided into two major sections: one deals with services provided in hospitals and facilities, and the other deals with services provided by physicians and other professionals. The Petitioner argues that while the facility section requires participation with BCBSM, the physician and other professional section does not.

The certificate covers ST and OT under both sections. The Petitioner argues that to be

covered, the therapy must be covered under one of the sections -- not both. The Petitioner believes that his therapy is covered under the physician and other professional providers section.

The Petitioner also argues that the certificate language is unclear even to BCBSM since it has given at least three different reasons why his therapy was not covered and it also required two additional weeks to provide an answer to the Petitioner after the managerial-level conference.

The Petitioner indicates that XXXXX Hospital is the only participating provider that provides both speech and occupational therapy services. He attempted to receive services at XXXXX but was placed on an indefinite waiting list. Therefore, he is still receiving services at XXXXX. Finally, the Petitioner indicates that page 4.25 of the certificate requires BCBSM to pay for nonparticipating providers when participating providers are not available.

The Petitioner asserts that his care at XXXXX is medically necessary and a covered benefit under his certificate. Therefore, he believes that BCBSM is required to pay for this care.

BCBSM's Argument

Under the terms of the certificate physical, occupational and speech therapies are not payable when provided in a nonparticipating freestanding outpatient facility or any other facility independent of a hospital or an independent sports medicine clinic.

In the Petitioner's case, services were billed and rendered by XXXXX, a nonparticipating facility. Therefore, services provided by Kaufman are not payable. BCBSM says it correctly denied payment for the Petitioner's care since it was provided in a nonparticipating facility.

Commissioner's Review

The certificate sets forth how benefits are paid. In *Section 3: Coverage for Hospital, Facility and Alternative to Hospital Care*, the certificate says part (page 3.26):

> Physical, occupational and speech therapies are not payable when provided in a nonparticipating freestanding outpatient physical therapy facility, or any other facility independent of a hospital or an independent sports medicine clinic.

The Petitioner's occupational and speech therapy were provided at and billed by Kaufman,

a nonparticipating facility. Therefore, this care is not a covered benefit based on the language cited above.

The Petitioner argues that his therapy should be covered under the provisions of Section 4 of the certificate. However, that section only deals with services billed directly by the physician or other professional provider. They do not apply to services provided and billed by an outpatient facility.

The Petitioner also argued that provisions on page 4.25 of the certificate require BCBSM to pay for nonparticipating services when a participating provider is not available. Those provisions create exceptions to the nonpanel deductible but do not have any application when the services are provided in a nonparticipating facility.

The Commissioner finds that BCBSM has denied the Petitioner's claims correctly according to the terms of the certificate and is not required to pay for the Petitioner's occupational and speech therapy at XXXXX.

V
ORDER

BCBSM's final adverse determination of February 11, 2008, is upheld. BCBSM is not required to pay for the Petitioner's care at XXXXX.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.